IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

InVue Security Products Inc.,	)	Civil Action No.:_______________
Plaintiff,	)	
	)	**COMPLAINT**
v.	)	Jury Trial Demanded
Mobile Tech, Inc. d/b/a Mobile Technologies Inc. and MTI, formerly known as Merchandising Technologies Inc.,	)	
Defendant.	)	

COMPLAINT

Plaintiff InVue Security Products Inc. ("Plaintiff" or "InVue") files this Complaint for patent infringement against Defendant Mobile Tech, Inc. ("Defendant" or "MTI") and alleges as follows:

1. InVue brings this action pursuant to the United States Patent Act, 35 U.S.C. § 100, *et seq*. MTI has infringed and continues to infringe one or more claims of U.S. Patent No. 9,576,452 (" '452 patent" or "patent-in-suit"). The patent-in-suit is entitled "Programmable Security System and Method for Protecting Merchandise."

2. The patent-in-suit claims priority through United States Application No. 15/241,708, filed on August 19, 2016, which is a continuation of United States Application No. 15/047,218, filed on February 18, 2016, and now United States Patent No. 9,478,110, which is a continuation of United States Application No. 14/825,436, filed on August 13, 2015, and now United States Patent No. 9,269,247, which is a continuation of United States Application No. 14/529,516, filed on October 31, 2014, and now United States Patent No. 9,135,800, which is a continuation of United States Application No. 14/254,244, filed on April 16, 2014, and now

United States Patent No. 8,884,762, which is a continuation of United States Application No. 13/169,968, filed on June 27, 2011, and now abandoned, which is a continuation-in-part of United States Application No. 12/770,321, filed on April 29, 2010, and now United States Patent No. 7,969,305,which is a continuation of United States Application No. 11/639,102, filed on December 14, 2006, and now United States Patent No. 7,737,846, which claims the benefit of United States Provisional Application No. 60/753,908, filed on December 23, 2005.

3. MTI has committed, and continues to commit, acts of direct infringement, contributory infringement, and inducement infringement of one or more claims of the patent-in-suit.

The Parties

4. InVue is a corporation formed under the laws of Ohio with a principal place of business at 15015 Lancaster Hwy, Charlotte, NC 28277.

5. MTI is a corporation formed under the laws of Indiana with a principal place of business at 1050 NW 229th Avenue, Hillsboro, Oregon 97124.

Jurisdiction

6. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the United States Patent Act, 35 U.S.C. § 100, *et seq*.

7. Upon information and belief, pursuant to the U.S. Constitution and N.C. Gen. Stat. Ann. 1-75.4, this Court has personal jurisdiction over MTI because MTI has transacted business within the State of North Carolina, has contracted to supply goods in the State of North Carolina, has engaged in infringing acts in the State of North Carolina, and has engaged in acts outside of the State of North Carolina causing injury or damage within the State of North Carolina, including in the Western District of North Carolina.

8. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1400 because InVue has its principal place of business in this district, MTI has committed acts of infringement in this district, and MTI is subject to personal jurisdiction here.

Patent-in-Suit

9. On February 21, 2017, the United States Patent and Trademark Office duly and legally issued the '452 patent, entitled "Programmable Security System and Method for Protecting Merchandise." True and accurate copies of the Issue Notification for the '452 patent and allowed claims of the '452 patent are attached as Exhibit A.[1]

10. The patent-in-suit describes an invention that advanced the art and relates to methods of protecting merchandise and programmable security systems that can include in certain embodiments, for example, a programming station comprising a logic control circuit configured to generate a security code. The programming station includes a port and a housing that encloses the logic control circuit. The security system also includes a programmable key with a memory for storing the security code. The programmable key has an end that can be inserted into the port of the programming station so that the security code can be programmed into the memory of the programmable key. The security system also includes at least one security device that includes at least an alarm, a port and a memory for storing the security code. The security device is configured to be attached to an item of merchandise and is configured to activate an alarm in response to the integrity of the security device being compromised. The end of at least one programmable key is configured to be inserted within the port of the security device to communicate with and control the at least one security device upon a matching of the

[1] The '452 patent issued on February 21, 2017, just before this Complaint was filed. InVue will supplement Exhibit A with a true and accurate copy of the '452 patent as issued.

security code stored in the key with the security code stored in the security device. Various embodiments with additional or different features are also described.

11. InVue is the owner of all rights, title, and interest in the patent-in-suit including the right to bring this suit for injunctive relief and damages.

12. InVue has not authorized MTI or its customers to manufacture, offer to sell, sell, use, or import any product or method covered by the patent-in-suit.

13. InVue has complied with the marking requirements of 35 U.S.C. § 287 for the patent-in-suit.

Defendant's Infringing Activities

14. Upon information and belief, MTI has infringed, and continues to infringe, the patent-in-suit by making, using, offering for sale, selling, and/or importing products, namely security systems, that practice the invention of the patent-in-suit (hereinafter the "Accused Products") and by inducing its customers to use the Accused Products.

15. The Accused Products include, by way of example and not limitation, programmable security systems having at least one programming station comprising a logic control circuit configured to generate a security code. The programming station includes at least one port and a housing that encloses the logic control circuit. The Accused Products also include at least one programmable key with a memory for storing the security code. An end of the programmable key can be inserted into the port of the programming station so that the security code can be programmed into the memory of the programmable key. The Accused Products also include at least one security device that includes an alarm, a port and a memory for storing the security code. The security device that is included in the Accused Products is configured to be attached to an item of merchandise and is configured to activate an alarm in response to the integrity of the security device being compromised. The end of at least one programmable key

included in the Accused Products is configured to be inserted within the port of the security device to communicate with and control the at least one security device upon a matching of the security code stored in the key with the security code stored in the security device.

16. MTI has used various names for the Accused Products as well as components of the Accused Products including, without limitation, devices and components MTI refers to as the “Freedom Micro”, “Freedom Micro DI”, “Intellikey Gen 2”, “Gen2 Intellikey Starter Kit”, “Intellikey Gen 2”, “Multiple Code Processor”, “MCP”, “Freedom LP4”, “LP4”, “Intelligent Switch Module”, “ISM”, and such other security devices and components that function in a similar manner and operate with an Intellikey and MCP, such others operating as described above in preceding Paragraph 15, and as may be further identified during this action.

17. MTI’s customers use the Accused Products in the U.S. including, for example, use by one or more retailers in the State of North Carolina.

18. The Accused Products and use of the Accused Products by MTI and MTI’s customers embodies and practices the invention claimed in the patent-in-suit.

19. MTI has constructive knowledge of the patent-in-suit at least through InVue’s compliance with the marking requirements of 35 U.S.C. § 287 for the patent-in-suit.

20. MTI has had actual knowledge of the '452 patent since at least the date on which MTI received the Complaint in this action.

COUNT 1

First Cause of Action: Direct Infringement of U.S. Patent No. 9,576,452

21. InVue incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

22. MTI’s manufacture, offer for sale, sale, importation, and/or use of the Accused Products in the United States directly infringes the '452 patent.

23. MTI's manufacture, offer for sale, sale, importation, and/or use of the Accused Products infringes, for example, at least claim 1 of the '452 patent.

24. One or more of the Accused Products, for example, includes a programmable security system that protects items of merchandise from theft. This programmable security system includes a programming device (referred to sometimes by MTI as a "Multiple Code Processor" or "MCP") that generates a security code. The programming device generates the security code using a logic control circuit which is enclosed by a housing. This programmable security system also includes at least one key (referred to sometimes by MTI as an "Intellikey") that is programmed with a security code. To program the at least one programmable key with the security code, an end of the key can be inserted into a port contained in the programming device and the security code is stored in the memory of the programmable key.

25. Such programmable security system also includes at least one security device that, for some of the Accused Products, is referred to by MTI as a "puck". The security device has an alarm, a port and a memory for storing the security code. The security device can be attached to an item of merchandise and will activate an alarm if the integrity of the security device is compromised by, for example, tampering with the security device or removing the item of merchandise from the security device.

26. The end of the programmable key of MTI's programmable security system is inserted within the port of the security device to communicate with and control the security device upon a matching of the security code stored in the key with the security code stored in the security device.

27. MTI's direct infringement of the '452 patent causes financial damages to InVue, including for example, lost sales revenue caused by MTI's sales of the Accused Products.

28. MTI's direct infringement of the '452 patent irreparably damages InVue, including for example, avoiding InVue's right to exclude others from making, using, selling, or offering to sell products embodying the invention patented in the '452 patent.

29. MTI's direct infringement of the '452 patent will continue unless enjoined by the Court under 35 U.S.C. § 283 and/or the equitable powers of the Court.

30. MTI has had actual knowledge of the '452 patent since at least the date on which MTI received the Complaint in this action.

31. MTI's direct infringement of the '452 patent constitutes willful infringement because such continues to proceed despite an objectively high likelihood that its conduct infringes valid claims of the '452 patent, and this likelihood is either known to MTI or so obvious that MTI should have known that its conduct infringed valid claims of the '452 patent.

COUNT 2

Second Cause of Action: Contributory Infringement of U.S. Patent No. 9,576,452

32. InVue incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

33. MTI has had actual knowledge of the '452 patent since at least the date on which MTI received the Complaint in this action.

34. Upon information and belief, MTI has had actual knowledge that the '452 patent would issue on February 21, 2017 because the application that resulted in the '452 patent and its file history in the United States Patent and Trademark Office (USPTO) were publicly available on the USPTO's Public Application Information Retrieval website beginning on December 8, 2016, the date of publication of the application, and the Issue Notification attached as Exhibit A, was publicly available on February 1, 2017. Because the '452 patent issued from an application

that was a continuation of one or more applications, which include applications that are now United States Patent No. 9,478,110 (the ‘110 patent), United States Patent No. 9,396,631 (the ‘631 patent), United States Patent No. 9,269,247 (the ’247 patent), United States Patent No. 9,135,800 (the '800 patent) and United States Patent No. 8,884,762 (the '762 patent), which are all asserted against MTI in Civil Action Nos. 3:15-cv-00610, 3:16-cv-00553 and 3:16-cv-00734 in the U.S. District Court for the Western District of North Carolina, and because the written description and drawings of the '452 patent describe exemplary embodiments of the inventions also described in the ‘110 patent, the ‘631 patent, the ’247 patent, the '800 patent, and the '762 patent, upon information and belief, MTI would have monitored the prosecution of the application that resulted in the '452 patent and been aware of its issuance on February 21, 2017.

35. The Accused Products are configured only for infringing use as programmable security systems protecting items of merchandise. For example, the Accused Products include one or more security devices that are configured only for purposes of attachment to an item of merchandise to protect the item of merchandise from theft and are used with programmable keys programmed with a security code.

36. The Accused Products are not staple articles of commerce.

37. The Accused Products are not suitable for substantial non-infringing use.

38. The Accused Products are especially made or especially adapted for use in an infringement of the '452 patent.

39. The use of the Accused Products by MTI’s customers constitutes direct infringement of the '452 patent.

40. On information and belief, MTI knows that the Accused Products are not staple articles of commerce, are not suitable for substantial non-infringing use, and are especially made

or adapted for use in a manner that infringes InVue's patent rights associated with the '452 patent.

41. MTI's actions constitute contributory infringement of the '452 patent.

42. MTI's contributory infringement of the '452 patent causes financial damages to InVue, including for example, lost sales revenue caused by MTI's sales of the Accused Products.

43. MTI's contributory infringement of the '452 patent irreparably damages InVue, including for example, avoiding InVue's right to exclude others from making, using, selling, or offering to sell products embodying the invention patented in the '452 patent.

44. MTI's contributory infringement of the '452 patent will continue unless enjoined by the Court under 35 U.S.C. § 283 and/or the equitable powers of the Court.

45. MTI's contributory infringement of the '452 patent is willful infringement because such continues to proceed despite an objectively high likelihood that its conduct infringes valid claims of the '452 patent, and this likelihood is either known to MTI or so obvious that MTI should have known that its conduct infringed valid claims of the '452 patent.

COUNT 3

Third Cause of Action: Inducement Infringement of U.S. Patent No. 9,576,452

46. InVue incorporates by reference the allegations of paragraphs 1 through 31 as if fully set forth herein.

47. MTI has had actual knowledge of the '452 patent since at least the date on which MTI received service the Complaint in this action.

48. Upon information and belief, MTI has had actual knowledge that the '452 patent would issue on February 21, 2017 because the application that resulted in the '452 patent and its file history in the United States Patent and Trademark Office (USPTO) were publicly available

on the USPTO's Public Application Information Retrieval website beginning on December 8, 2016, the date of publication of the application, and the Issue Notification attached as Exhibit A, was publicly available on February 1, 2017. Because the '452 patent issued from an application that was a continuation of one or more applications, which include applications that are now United States Patent No. 9,478,110 (the ‘110 patent), United States Patent No. 9,396,631 (the ‘631 patent), United States Patent No. 9,269,247 (the '247 patent), United States Patent No. 9,135,800 (the '800 patent) and United States Patent No. 8,884,762 (the '762 patent), which are all asserted against MTI in Civil Action No. 3:15-cv-00610, 3:16-cv-00553 and 3:16-cv-00734 in the U.S. District Court for the Western District of North Carolina, and because the written description and drawings of the '452 patent describe exemplary embodiments of the inventions also described in the ‘110 patent, the ‘631 patent, the '247 patent, the '800 patent, and the '762 patent, upon information and belief, MTI would have monitored the prosecution of the application that resulted in the '452 patent and been aware of its issuance on February 21, 2017.

49. MTI sells and continues to sell the Accused Products to its customers with the intent that its customers will use and operate the Accused Products in the United States in a manner that infringes the '452 patent.

50. MTI provides its customers with instructions regarding the infringing use and operation of the Accused Products in the United States.

51. Upon information and belief, MTI trains its customers in the infringing use and operation of the Accused Products in the United States.

52. Upon information and belief, MTI has observed its customers using and operating the Accused Products in the United States in an infringing manner.

53. Upon information and belief, MTI is aware or should have known that use and operation of the Accused Products in the United States by MTI or its customers would directly infringe the '452 patent.

54. MTI's actions to aid and abet its customers to directly infringe the '452 patent with knowledge that use of the Accused Products in the United States would directly infringe the '452 patent constitutes inducement infringement.

55. MTI's inducement infringement of the '452 patent causes financial damages to InVue, including for example, lost sales revenue caused by MTI's sales of the Accused Products.

56. MTI's inducement infringement of the '452 patent irreparably damages InVue, including for example, avoiding InVue's right to exclude others from making, using, selling, or offering to sell products embodying the invention patented in the '452 patent.

57. MTI's inducement infringement of the '452 patent will continue unless enjoined by the Court under 35 U.S.C. § 283 and/or the equitable powers of the Court.

58. MTI's inducement infringement of the '452 patent is willful infringement because such continues to proceed despite an objectively high likelihood that its conduct infringes valid claims of the '452 patent, and this likelihood is either known to MTI or so obvious that MTI should have known that its conduct infringed valid claims of the '452 patent.

Request for Relief

Wherefore, InVue respectfully requests the entry of judgment against Defendant MTI and its subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees, and all persons in active concert or participation, providing the following relief:

A. Finding that Defendant MTI has directly infringed, either literally or by doctrine of equivalents, has committed contributory infringement, and/or has committed inducement infringement of one or more claims of the patent-in-suit and finding that such infringement has been willful;

B. Entering a permanent injunction, under 35 U.S.C. § 283 and the equitable powers of the Court, against Defendant MTI and all those in active concert or participation with Defendant MTI, to prevent further direct and/or indirect infringement of the patent-in-suit;

C. Awarding Plaintiff InVue damages in an amount that will be proved at trial and that will adequately compensate Plaintiff InVue for the infringement but in no amount less than a reasonable royalty as authorized by 35 U.S.C. § 284;

D. Increasing the damages awarded to Plaintiff InVue up to three times the amount of Plaintiff's actual damages as authorized by 35 U.S.C. § 284;

E. Finding that this is an exceptional case and award Plaintiff InVue its attorneys' fees and other expenses of litigation pursuant to 35 U.S.C. § 285 and/or other applicable laws;

F. Awarding Plaintiff InVue prejudgment interest and costs under 35 U.S.C. § 284 and/or other applicable laws; and

G. Granting such other legal and equitable relief and the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues triable to a jury.

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This the 21st day of February, 2017.

Respectfully submitted,

s/ J. Mark Wilson

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